



File Code: 1570-1 (215)
#08-01-00-
0089/0093/0094/0095/
0096/0097

Date: May 19, 2008

Dear Appellants:

This is my decision on disposition of the appeals filed by Jack Sautter, #08-01-00-0089; Capital Trail Vehicle Association, #08-01-00-0093; Charles M. Hedrick, #08-01-00-0094; Montana Multiple Use Association, #08-01-00-0095; Western Environmental Law Center on behalf of Montana Wilderness Association, #08-01-00-0096, and Citizens for Balanced Use, #08-01-00-0097, regarding the South Belts Travel Plan Decision Notice (DN) on the Helena National Forest.

My review of your appeals was conducted pursuant to, and in accordance with, 36 CFR 215.18 to ensure the analysis and decision are in compliance with applicable laws, regulations, policy, and orders. I have reviewed the appeal record, including your arguments, the information referenced in the Forest Supervisor's April 18, 2008, transmittal letter, and the Appeal Reviewing Officer's recommendation (copy enclosed). The transmittal letter provides the specific page references to discussions in the DN and project file, which bear upon your objections. I specifically incorporate in this decision the appeal record, the references and citations contained in the transmittal letter, and the Appeal Reviewing Officer's recommendation.

The Appeal Reviewing Officer has considered your arguments, the appeal record, and the transmittal letter and recommends the Forest Supervisor's decision be affirmed and your requested relief be denied.

Based upon a review of the references and citations provided by the Forest Supervisor, I find the objections were adequately considered in the DN. I agree with the Appeal Reviewing Officer's conclusions in regard to your appeal objections. I find the Forest Supervisor has made a reasoned decision and has complied with all laws, regulations, and policy.

After careful consideration of the above factors, I affirm the Forest Supervisor's decision to implement the South Belts Travel Plan. Your requested relief is denied.



My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

KATHLEEN A. MCALLISTER
Appeal Deciding Officer

Enclosure

cc:
Appeal Reviewing Officer
Responsible Official
Forest Coordinator



File Code: 1570-1

Date: May 15, 2008

Route To: (1570 (215))

Subject: 1570 (215) - ARO Letter -South Belts Travel Plan DN - Helena NF - Multiple Appellants - #08-01-00-0089/0093/0094/0095/0096/0097/0099

To: Appeal Deciding Officer

This is my recommendation on disposition of the seven appeals filed by Jack Sautter (Appeal number 08-01-00-0089), Capital Trail Vehicle Association (Appeal number 08-01-00-0093), Charles Hedrick (Appeal number 08-01-00-0094), Montana Multiple Use Association (Appeal number 08-01-00-0095), Western Environmental Law Center for the Montana Wilderness Association (Appeal number 08-01-00-0096), Citizens for Balanced Use (Appeal number 08-01-00-0097) and Joe Jepson (Appeal number 08-01-00-0099) protesting the South Belts Travel Plan Decision Notice (DN) and Finding of No Significant Impact (FONSI) on the Helena National Forest.

The Forest Supervisor's decision adopts Alternative 2-Modified of the South Belts Travel Plan, which includes maintaining 157 miles of road open to licensed vehicles, closing 122 miles of road to motorized uses, closing 17 miles of road during the hunting season, and maintaining 10 miles of motorized trails (open at various times during the year).

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision are in compliance with applicable laws, regulations, policy, and orders. The appeal record, including the appellants' objections and recommended changes, has been thoroughly reviewed. Although I may not have listed each specific issue, I have considered all the issues raised in the appeals and believe they are adequately addressed below.

Seven appeals were received on this decision. The Forest consolidated the issues raised in the appeals in the transmittal letter. The appeal points were arranged into ten issues with numerous sub-issues. I have considered each of the issues and sub-issues in this Appeal Reviewing Officer's letter. I have kept the same numbering system the Forest used in the transmittal letter so each appellant can find my response in this letter to his/her issue as listed in the transmittal letter.

Due to the large number of appeals and issues, the issues were consolidated and often paraphrased. Some specific points raised by various appellants were included to help clarify some of the issues and to make sure the responses addressed variations on the issues given by each appellant. During my review, the original appeals have been reviewed for the exact wording of the issue and any supporting information they may have provided.

The appellants allege violations of the U.S. Constitution, the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Endangered Species Act (ESA), the Multiple Use Sustained Yield Act (MUSYA), the Rehabilitation Act, the Administrative Procedures Act (APA), Executive Order 11644, and the Helena Forest Plan. One appellant lists numerous other laws, but it is not clear how they allege the Forest violated them. The appellants request the DN be rescinded or remanded and an Environmental Impact Study be initiated to



correct all the errors. Some of the appellants identify very specific changes to particular roads or trails they would like the Forest to do. Informal meetings were held but no resolution of the issues was reached.

ISSUE REVIEW

Issue 1. Purpose and Need (Scope of the Action/Decision):

1a. The Forest limited the scope of the action to only the management of motorized travel. (Appeals 0093, 0095)

Response: The EA (pp. 3 and 4) includes a *Background* section, explaining the initial travel planning efforts for the South Belts, Divide, and Blackfoot areas of the Helena NF, begun in 2000, which did include consideration of both motorized and non-motorized routes. The EA explains (p. 4) following the issuance of the 2005 Travel Rule, the Forest focused on designation of the existing road and motorized trail systems and areas, including consideration of non-system motorized routes, in accordance with direction established in the Travel Rule.

The EA (p. 3) includes a description of the proposed action, which states the analysis is limited to the period from May 15 to December 1, because winter use (December 2 to May 15) was decided in the South Big Belts Winter Travel Plan EA and FONSI in 1999. The description of Alternative 2 (EA, p. 15) states that the Alternative was developed “due to the need of providing opportunity for motorized use while addressing other resource needs,” and outlines certain specific issues Alternative 2 is intended to address.

The Decision Notice (p. 10) includes a discussion about the Scope of the Decision, and addressed the comments regarding the difference from previous travel planning efforts on the Helena National Forest. The Forest Supervisor describes the background for his decision on the scope of the analysis. The project record (PR, Doc. D35, p. 1) contains a letter from the Regional Forester responding to a letter from Montana Multiple Use Association (MMUA) concerning the scope of the proposed action, and affirms the scope set by the Forest Supervisor. The analysis and decision are in compliance with NEPA which allows for the Deciding Official to determine the scope of the analysis.

1b. The Forest established arbitrary deadlines/timeframes which eliminated additional analysis and alternatives from consideration, in the violation of NEPA, APA, and the United States Constitution. (Appeal 0095)

Response: The Region is within its authority to set up a schedule for completing designation of the motorized transportation system as required by the 2005 Travel Rule, on a Forest by Forest basis, with the Helena National Forest scheduled to be completed by 2009. The Helena National Forest contains six travel plan areas, and travel planning decisions have been made for three of the areas. The schedule for completing the travel planning for the three remaining areas was included in a March 2007 newsletter (PR, Doc. B1, p. 4). The project record (PR, Doc. D35, p. 1) contains a letter from the Regional Forester responding to a letter from MMUA concerning the scope and timeframe of the proposed action, affirming the timeframe set by the Forest

Supervisor. The timelines developed for completion of the project meet all NEPA requirements. The project is in compliance with APA and the U.S. Constitution, as well.

Issue 2. Range of Alternatives:

2a. The Forest presented an insufficient number of alternatives. (Appeals 0093, 0094, 0095, 0096)

Response: The development of alternatives was derived from the scope of the analysis, which is within the discretion of the Responsible Official. The EA (p.11) describes the process used for the development of alternatives, including the several modifications made to the proposed action in response to public comments.

The EA (p. 4) describes alternatives considered but eliminated from detailed consideration, including the alternative presented by MMUA and Capital Trail Vehicle Association (CTVA). The EA then discusses the intrinsic problems with the alternative as proposed by the groups. It exceeded the scope and the purpose and need because it included new route construction, incorporated routes on private lands, reopened routes in IRAs and in Forest Plan recommended Wilderness, and reopening numerous miles of routes that would move away from Forest Plan standards for big game management. A modification of that alternative, which did fit within the project scope, was offered by the Helena National Forest to the two user groups, but was not received favorably, and not pursued further.

The statutory and regulatory requirements that an agency must consider “appropriate” and “reasonable” alternatives do not dictate the minimum number of alternatives that an agency must consider. The courts have established the regulations do not mean every conceivable alternative must be considered, but that selection and discussion of alternatives must permit a reasoned choice and foster informed decision making and informed public participation. The range of alternatives does this and is in compliance with NEPA.

2b. The analysis failed to include the May 22, 2007 additions to Alternative 2, as discussed in our meeting with Steve Wyatt. (Appeal 0093)

Response: The Forest worked with CTVA and MMUA to develop a multiple use alternative within the sideboards of the scope and purpose and need of this project (PR, Doc. H-3, Public Comments and Forest Responses, response to letter #58). The specific motorized routes submitted for Forest Service consideration in May, 2007, were addressed in a response from the District Ranger in a letter dated May 31, 2007 (PR, Doc. D-9). As described in the EA (pp. 11 and 12), the Forest Service draft alternative was rejected completely by the groups and no subsequent workable alternative was submitted to the Forest Service by the groups. A discussion of the resolution of each point (including the inclusion of some of those routes into Alternative 2) can be found in the project record (PR, Doc. H-3, p. 15). The range of alternatives is in compliance with NEPA.

2c. The analysis failed to consider a non-motorized alternative in the Grassy Mountain Inventoried Roadless Area. (Appeal 0096)

Response: The No Action Alternative does not consider the IRA non-motorized because there are legally open roads in the IRA at this time. Alternative 2 closes some roads in the IRA, but does not close all of them because there is no requirement to close all existing roads in an IRA and because some of the roads in the IRA have been used without conflict and resources damage. Table 3 (PR, Doc. A86) states, Route 124 “is currently open to motorized vehicles (4x4 route) from [the] microwave site north to Skidway Campground, and south. [The p]roposed action is no change. [Route 124 h]as been traditionally motorized and used by permittees, and recreationists and horseback use with no user conflicts.”

The final Decision included a modification of Alternative 2, closing a portion of route #105 from the summit of Grassy Mountain west to the junction of trails #105 and #123 (DN, p. 1) because the route encroaches into the core of the Grassy Mountain IRA and provides very limited opportunity for motorized access. The Decision Notice (p. 8) contains the rationale for decisions made on routes contained within the three IRAs in the analysis area, including Grassy Mountain. The range of alternatives is in compliance with NEPA.

2d. The analysis failed to respond to comments that were “significant” issues. I have no idea if my or any public comments were considered. (Appeals 0093, 0099)

Response: Responses to all comments are included in Appendix B of the EA. Response to comments and issue development were dealt with in the context of the purpose and need, and scope of the decision, which is within the discretion of the Responsible Official to determine. Responses to Issue 1 (above) provide a detailed background with respect to how and why the purpose and need, and scope, were developed. In addition, the *Public Involvement* and *Issues* sections of the EA (pp. 7 to 9) describe how comments and issues were considered in the analysis of effects, including the degree to which the alternatives would affect motorized uses and opportunities.

Responses to CTVA are specifically addressed in the EA (Appendix B, p. 5, comment #12, and p. 15, comment #58). Although CTVA would have preferred to see their comments used to drive alternative development, each of the issues raised by CTVA is addressed in the analysis. Displacement and impacts to motorized development are addressed in the recreation specialist report (PR, Doc. F12, pp.15 to 16), including three different situations that are contributing to the changing recreational picture in the South Big Belts, and to motorized use in particular. The analysis responded to all comments, in compliance with NEPA.

2e. The Forest failed to respond to a request for a programmatic impact analysis. (Appeal 0097)

Response: The 3-State OHV EIS *was* the programmatic analysis directing the Forest to conduct site-specific analysis. However, your request was elevated to the Regional Office for consideration (PR, Doc. H3, p.19). The recreation specialist’s report (PR, Doc. F12, pp. 15 to 18), includes a discussion in the *Affected Environment* section, which outlines cumulative impacts to motorized recreation use in the area as a result of other Helena National Forest actions; the issuance of the 2001 Off-Highway Vehicle Plan for Montana, North Dakota, and Portions of South Dakota; the implementation of travel plans elsewhere in southwest Montana by

the Forest Service and BLM; and the loss of public access across private lands. The cumulative effects section contains additional information. (Also see my responses to Issues 4c, 5a, and 5b). The analysis is in compliance with NEPA.

2f. The analysis failed to account for the need for motorized recreational opportunities. (Appeals 0093, 0095, 0097)

Response: In the introduction of the Purpose and Need section (EA, p. 1) the Forest recognized the increased popularity and widespread use of OHVs on public lands, and goes on to say this increased use has created a need for new regulations in order for the Forest Service to continue to provide these opportunities, while sustaining the health of the National Forest System lands and resources.

Although the Forest Service does provide for multiple uses (MUSYA, 16 U.S.C. 531), there is no mandate that all uses must be accommodated on all acres of the National Forest. Motorized use is allowed where it does not unduly impact resource values, does not encourage illegal entry into wilderness, and is compatible with other recreation or social uses. The Forest Supervisor recognizes the need for motorized recreational opportunities, explains in the DN (p. 7) his rationale for reduction of motorized routes, and addresses the potential for displacement of motorized users. The Forest took a hard look at where opportunities for motorized routes could be provided without unacceptable impacts to natural resources. The analysis is in compliance with NEPA.

Issue 2g(1). The closure of areas will prohibit meeting future transportation needs. (Appeal 0095)

Response: The Proposed Action does not include the closure of “areas,” only the closure of unnecessary roads and trails. The Forest Supervisor states in the Decision Notice (p.10), “This decision does not hinder or prevent opportunities for future resource projects such as... enhancement for the motorized recreation experience.” Building future roads and trails is not precluded by this Decision.

Issue 2g(2). The Forest failed to provide an adequate quantity and quality of motorized opportunities. (Appeals 0093, 0095, 0097)

Response: I note one appellant commented that an adequate and reasonable decision would have included an adequate quantity and quality of beginning, intermediate, and advanced routes and trails. The Forest Service does not classify roads and trails in this manner, and constructing routes to intentionally design for various skill levels is outside the purpose and need of this travel management plan.

I have already discussed the Forest’s accounting for motorized recreational needs (see response to 2f). It is clear from the EA that Alternative 2 would continue to provide for a mix of motorized recreational experiences. The difference between the existing condition and Alternative 2 is that Alternative 2 closes about 33 miles of road, still leaving 140 miles of roads open (EA, p. 35, Table 3.4). The EA (p. 31, Table 3.1) shows motorized opportunities (on

designated routes) actually are available on 83 percent of the National Forest System lands in the South Belts, while 17 percent are strictly for non-motorized opportunities. The Forest is providing adequate motorized recreational opportunities.

Issue 2h. The Forest failed to provide access for disabled and those hunters over 70 years old. (Appeals 0089, 0094)

Response: In the comments and responses on the 2005 Motorized Travel Rule published on November 9, 2005 in the Federal Register, the agency states, “Under section 504 of the Rehabilitation Act of 1973, no person with a disability can be denied participation in a Federal program that is available to all other people solely because of his or her disability. In conformance with section 504, wheelchairs are welcome on all National Forest System lands that are open to foot travel and are specifically exempt from the definition of motor vehicle Sec. 212.1 of the final rule, even if they are battery-powered. However, there is no legal requirement to allow people with disabilities to use OHVs or other motor vehicles on roads, trails, and areas closed to motor vehicle use because such an exemption could fundamentally alter the nature of the Forest Service’s travel management program (7 CFR 12e.103). Reasonable restrictions on motor vehicle use, applied consistently to everyone, are not discriminatory”.

The EA (p. 13) includes a feature common to both alternatives that disabled access is provided consistent with the Rehabilitation Act of 1973. Table 2.4 (EA, p.18), displays miles of open motorized routes for both alternatives and discloses that Alternative 2 would result in a 19 percent reduction in motorized access for disabled/older users.

However, the Forest did make some modifications to the proposed action based on public comment, including route changes that were identified by older or disabled persons (EA, p. 11). The EA (Appendix A) identifies routes providing “hunter opportunity”. The EA (Appendix B) discloses that Trail 105 was added to Alternative 2 in response to the comment #6b. “Jeep Trail 105 from Grassy Mountain to ridge to the west in Section 32 is a disabled hunter access location. Keep open.” In addition, Road 4023 to the Duck Creek microwave site would remain open in Alternative 2 in response to requests for access for older and disabled hunters (PR, Doc. C1, p.100, #15a, #43d). A response to comment #33e in Appendix B describes a closure that remains under Alternative 2 because of the public acceptance, and because it is a more accessible area to older and partially disabled hunters who wish to hike due to the low grades of the closed roads. The project is in compliance with the Rehabilitation Act.

2i. The decision failed to provide for future recreation needs. (Appeals 0093, 0095)

Response: The EA (p.1) addresses the need for the Forest to continue to provide for the growing demands of motorized use, combined with the need to protect resources, and minimize conflicting uses. Public land managers must determine the type of recreation activities that are most appropriate for specific locations. Travel management decisions are evaluated from both a resource and social perspective. The *Transportation* section (PF, Doc. C1, p. 26) states traffic service levels for the South Belts transportation system are still more than adequate for the amount of traffic occurring and are expected to continue to provide adequate service into the future, accounting for area population growth and potential displacement. The recreation

specialist report (PR, Doc. F12) considers the projected growth of recreation, and addresses future recreational needs on the Helena National Forest, including the cumulative effects identified for this project and associated past, current, and reasonably foreseeable actions. This analysis considered future growth and the needs of future recreation, along with needs for resource protection (PR, F12, p 20). The analysis is in compliance with NEPA.

2j. The transportation planning failed to recognize other resource needs. (Appeal 0095)

Response: The Helena Forest Plan (1986) guides all natural resource management activities and establishes management standards for the Helena National Forest. The Project Record (Section F) contains specific analysis for each resource. Each of these resources were evaluated during the planning process. Table 2-4 (PR, Doc. C1, pp.17 to 20) provides a summary comparison of effects for each alternative. This summary includes a description of access for forest products, range management, mineral activity, weed treatment, fire response, recreation, roadless and recommended wilderness areas, economics, land special uses, heritage resources, wildlife, fish, sensitive plants, and soil and water resources. The EA (Chapter 3), in accordance with 40 CFR 1502.21, incorporates by reference the resource specialist reports in the Project Record. It is clear the analysis considered other resources and their needs. The analysis is in compliance with NEPA.

2k. The Forest did not provide for a workable network of motorized routes in the Middle Fork of Cabin Gulch. (Appeals 0093, 0094)

Response: Middle Fork Cabin Gulch trail 106 is an existing non-motorized trail. This is an area of high road density with routes that cross sensitive soils, and the potential to impact wildlife or fish habitat. The main roads through the Cabin Gulch Area are the North Fork to Cabin Gulch loop Road, West Fork Cabin Gulch Road, and Holloway Road. There are several short road segments off the main routes that provide access to trailheads, private land, and harvest areas. Nearly all of these routes have spring closures to prevent road damage. Most of the routes in this area were also constructed for access for timber harvest.

There is currently a network of both “system” and non-system roads in the South Big Belts that provide a variety of motorized opportunities. There are approximately 105 miles of Forest roads providing “external” loop travel where off Forest routes, such as State and County roads are utilized to complete the loop. Nine separate external loops routes were identified under the current situation and they are primarily located in the southern portion of the project area from the North Fork of Deep Creek south to Forest Road 583. “Internal” loop routes were also identified in which traveling entirely on open Forest roads is done to complete the loop. About 60 miles of internal loops exist in the area south of HWY 12 to Forest Road 583 (PR, Doc. F12, p.16). The Forest has provided a workable network of motorized routes.

Issue 3. Issues with specific roads, trails, or areas, and RS 2477:

3a. Issues with the Decision on specific roads and trails.

3a(1). Routes 126, 105, and 107 should be motorized, and the point of closure should be moved on roads NS65 and 583-G1. (Appeals 0093 and 0099)

Response: Middle Fork Cabin Gulch 126 intersects trail 106 in the Holloway and Cabin Gulch areas. These are existing non-motorized trails, surrounded by an area of high road density. The Forest found no need to open Route 126 to motorized use also.

Trail 107 is a non-motorized trail within the Mount Baldy Inventoried Roadless Area (IRA), joining with trail 152 that accesses the proposed wilderness area. Alternative 2 would provide a small improvement to the roadless characteristic by reducing motorized use by 1.6 miles. This would create an area of solitude on the south portion of the IRA, while the Gypsy Lake area to the North would remain open. The goal for Mount Baldy management area P-3 is to protect the wilderness character to the extent possible, while allowing existing uses, pending Congressional classification (PR, Doc. C1, App C. p. 141). Keeping Trail 107 non-motorized helps to maintain the wilderness character.

Trail 105 has a distinguishable full size two track but is an inventoried non-motorized trail. It was identified in Alternative 2 of the EA as open to motorized use based on public comments provided on the March 2007 proposed action. However, after further evaluation the Forest Supervisor decided to close Trail 105 to motorized use. This modification to 105 was made primarily to remove a motorized route from the core of the Grassy Mountain roadless area. (PR, Doc. H1, p. 9).

Closure of routes NS 65 and 583-G1 to motorized use 5/15-12/1 was not identified as a needed change with this project, thus they were not included in Alternative 2. I am aware the Forest and the appellant (Mr. Jepson) are working to resolve this issue. The analysis and the response to public comments are in compliance with NEPA.

3a(2). A reasonable alternative to include OHV trails from Skidway Campground was not evaluated. (Appeal 0093)

Response: A large portion of the cross-country ski trail behind Skidway Campground is within the Grassy Mountain roadless area. When this trail was constructed one of the agreements/mitigation measures in the decision for this trail is that it would not be maintained using motorized means or opened to motorized use (PR, Doc. H3 letter #12). In contrast to this, under Alternative 2 Road 124 does provide motorized access for licensed vehicles from Skidway Campground to Grassy Mountain from 5/15-12/1.

The small size, shape, and location of the Grassy Mountain area limit opportunities for remoteness. The motorized vehicle closure on the trail located west of Skidway Campground (Road 4042-A1) is one of only three motorized travel restrictions in the area. It provides an opportunity for semi-primitive recreation experience to non-motorized users. The range of alternatives is in compliance with NEPA.

3a(3). The closure of routes 105, NS 54, and 124 to full-sized vehicles limits hunting and fishing opportunities. These routes should be open to full-sized vehicles. (Appeal 0089)

Response: Route 105 from the ridgetop of Grassy Mountain west to the junction of trail 123 has a distinguishable full size two track, but is an inventoried non-motorized trail in the existing condition. Route 105 was not considered for motorized use because it was not constructed for such use, and it is popular with non-motorized users. The end of Route 105 is near the core of the IRA, so the Forest Supervisor decided this route should remain closed to motorized uses to provide lasting protection to the Grassy Mountain IRA.

Non-system routes have never gone through the NEPA process. These roads/trails were formed without regard to best management practices (BMPs), sensitive species, soil conditions, or water quality. They do not receive maintenance, and may result in undesirable impacts to the mentioned resources. The decision to close NS 54 is due to the high open road density in the area, for soil and water protection, and because non-system routes have proliferated in the area (PR, Doc. C1, p. 96).

Route 124 was designated in early travel maps as a motorized trail open to vehicles 40 inches or less in width, then later to vehicles 48 inches or less, and was also used by 4x4 vehicles since there were few restrictions prior to the 2001 OHV decision. The proposed action, Alternative 2 modified, would convert it back to a motorized trail. This decision provides a balance between closing some motorized routes and keeping open others among the three IRAs in the South Belts project area. This decision provides lasting protection of the IRAs while still allowing some motorized routes within the multiple use premise of the 2001 Roadless Rule.

3a(4). The Forest Service did not explore making Trail 124 non-motorized, or making Grassy Mountain Inventoried Roadless Area totally non-motorized. (Appeal 0096)

Response: The EA (Appendix A, p. 95) lists the south half of Trail 124 south from the microwave towers to the junction of Trail 104 as an open road in Alternative 1, the no action alternative. Records and maps identify Route 124, starting with the 1984 travel map, prior to the 2001 Tri State OHV ROD, as a motorized trail in an area open to off-route use (PR, Doc. H3, comment #95). Forest staff and long time local permittees recall full size vehicle use on this route for more than 20 years. When the 2001 Tri State OHV ROD was enacted two tracks were visibly apparent on Trail 124 making it a legitimate open, motorized route for full sized vehicles (DN, p. 9; PR, Doc. H3, p. 5; and PR, Doc. A114). The proposed action, Alternative 2-Modified, would convert Route 124 back to a motorized trail. There is no requirement under the Roadless Rule to remove all existing motorized routes from inventoried roadless areas. The Decision is in compliance with NEPA, the Roadless Rule, and the Tri State OHV ROD.

3b. The EA inappropriately used the Tri State OHV ROD and Travel Rule to eliminate areas of motorized use. (Appeal 0093, 0095)

Response: In November 2005 the Forest Service announced final travel management regulations governing OHVs and other motor vehicle use on national forests and grasslands (2005 Travel Rule: 36 CFR Part 212). This final rule requires designation of those roads, trails, and areas that are open to motor vehicle use. Designation will be made by class of vehicle and, if

appropriate, by time of year. The final rule prohibited the use of motor vehicles off the designated system.

The Forest reviewed which roads and trails could or should sustain motorized use and decided to close those that could not. The Deciding Official did not inappropriately use the Tri State OHV ROD and Travel Rule to eliminate areas of motorized use. Rather the decision was based on resource considerations. In Table 3.1 (PR, Doc. C1, p. 31), motorized opportunities actually are available still available on 83 percent of the National Forest System lands, while 17 percent are available strictly for non-motorized opportunities.

3c. RS 2477 routes were not adequately addressed and protected by this action. (Appeals 0093, 0095)

Response: Current Forest Service policy concerning RS 2477 roads is found in the Forest Service Manual at 2734.5 to 2734.6. It recognizes only public road management agencies as valid RS 2477 applicants. The Forest Service encourages those agencies to document their claims by applying for appropriate easements. Private citizens and private organizations do not have authority to claim RS 2477 rights, because they do not have the authority to manage a road for public use. At the time of application by an agency, the Forest Service will substantiate the authenticity of the presented evidence. In order to substantiate authenticity of presented evidence, the agency and possibly Office of General Council (agency lawyers) would need to review and analyze the evidence in making such a determination (PR, Doc. A91, p.1). If a road does qualify under RS2477, adjustments will be made in subsequent Travel Maps, as needed (PR, Doc. C1, p. 106, #41b). The Helena National Forest has not received any RS 2477 assertions from any public road management agency.

3d. The transportation planning failed to recognize private property rights. The Alaska National Interest Lands Conservation Act (ANILCA) provides that access shall be provided to private property. (Appeal 0095)

Response: Within the analysis area, there are roads owned by local and state government, private landowners, and the Forest Service. These roads are included as part of the analysis and are shown on the maps where they are the connectors between other primary forest roads (PR, Doc. F18, p. 4). Neither Alternative 1 nor 2 would result in changes to access of private land (PR, Doc. C1, p. 19, Table 2.4). There are currently three Private Road Special Use Access Permits issued within the South Belts Travel Plan project area. These permits authorize exclusive access to the permit holders on roads that are closed yearlong to the general public. Use of these roads is limited to the permit holder, and in most cases, gates/signs effectively prohibit public motorized use (PR, Doc. C1, p. 85).

Roads closed by the Travel Plan decision would remain available for future administrative or permitted use, as needed. Exceptions allowing motorized use of roads and areas otherwise closed to motor vehicles may be authorized for activities such as search and rescue, weed control, access to private property, permitted uses, and law enforcement activities. This will continue to be the case under this travel management decision. The decision is in compliance with NEPA, ANILCA, and Executive Order 12630.

Issue 4. Lack of Site Specific Analysis:**4a. The EA lacked site-specific analysis as directed by the 3-State OHV Rule and the 2005 Travel Rule. (Appeals 0093, 0094, 0097)**

Response: The 2001 Tri State OHV EIS was a programmatic document. The ROD directed the forests to set up a schedule for completing site-specific planning that would designate appropriate uses on all system and non-system roads and trails (EA, p. 6; DN, p. 2). The 2005 Travel Rule directed forests to site-specifically designate the motorized transportation system and areas (EA, p. 6; DN, p. 2). The HNF inventoried the system and non-system routes (EA, Appendix A, and Chapter 3; DN, pp. 6 and 7; PR Doc. F12, p. 2), and conducted a site-specific analysis through their Roads Analysis Report and inventory of the system and non-system routes (EA, pp. 7, 25, and 26; PR, Doc. G95; and PR Doc. F12, p. 2). They reviewed and changed the alternatives based on public comment (DN, p. 5; EA, App. B). The analysis is site-specific and is in compliance with the 3-State OHV Rule and the 2005 Travel Rule.

4b(1). The EA does not adequately disclose of the amount of non-motorized opportunities. (Appeal 0093)

Response: The 2005 Travel Rule requires designation of those roads, trails, and areas that are open to motor vehicle use. Designations will be made by class of vehicle and, if appropriate, by time of year. The Rule prohibits the use of motor vehicles off the designated system, as well as use of motor vehicles on routes and in areas that are not consistent with the designations (PR, Doc. G97, p. 1). Following the issuance of the 2005 Travel Rule, the Forest focused on designation of the existing road and motorized trail systems and areas, including consideration of non-system motorized routes, in accordance with direction established in the Travel Rule (EA, p. 4). The non-motorized trails were not included in this project analysis because the project focus is in compliance with the 2005 Travel Rule regarding designation of motorized travel routes. It should be noted closed roads were not shown on the map of the Proposed Action, which included a statement that said currently closed roads not proposed for change are not shown on the map. The EA (Appendix A, Routes by Alternative), and the map of the chosen alternative (DN, p.18) disclose and display the closed roads by alternative.

The EA (Table 3.1) indicates motorized opportunities (on designated routes) are available on 83 percent of the National Forest System lands, while 17 percent are available strictly for non-motorized opportunities. The level of analysis and inventory for motorized and non-motorized routes is in compliance with the 2005 Travel Rule and MUSYA.

4b(2). The EA does not adequately disclose the existing designation of Trail/Road 124 (Appeal 0096)

Response: The EA and DN do adequately explain the complicated situation with Route 124. See my response to Issue 3a(4).

4c(1). The decision is not based on any site specific data. It is largely based on potential issues and impacts that have no site specific studies. It is arbitrary to base a decision on only the incomplete and insufficient EA. (Appeals 0093, 0095)

Response: The 2001 Tri State OHV ROD directed the Forests to set up a schedule for completing site-specific planning that would designate appropriate uses on system and non-system roads and trails (EA, p. 6; DN, p. 2). The HNF site-specifically inventoried the system and non-system routes (EA, App. A, and Ch. 3; DN, pp. 6 and 7; PF, Doc. F12, p. 2), and conducted a site-specific analysis through their Roads Analysis Report and inventory of the system and non-system routes (EA pp. 7, 25, and 26; PF, Docs.G95 and F12, p. 2). Each resource specialist also conducted site-specific analyses of the impacts open and closed road would have on each of their resources (EA, Chapter 3). As discussed in the EA (pp. 7 to 9) issues are based on public comments. The Forest reviewed and responded to public scoping comments, and changed the alternatives based on public comment (DN, p. 5; EA, App. B). The analysis and decision are based on site-specific information. The available information is sufficient to make a Finding of No Significant Impact (FONSI). The Decision is in compliance with the 3-State OHV Rule, the 2005 Travel Rule, and NEPA.

4c(2). The Helena National Forest acknowledges there is no data collected showing that public use has decreased or has stabilized. Therefore, research specific to the area is insufficient and incomplete, and will require a complete analysis. (Appeal 0095)

Response: The EA (Table 1, p. 4) indicates a trend of growing ownership and use of OHVs in Montana. Documentation in the project file indicates, like much of the country, the State of Montana and the Helena National Forest have noted an increased popularity in OHV travel. The sale and use of All Terrain Vehicles and Sport Utility Vehicles have greatly increased since the early 1990s. At this time it is difficult to envision a future decrease in motorized demands on National Forest System lands. It is important to note that while the demand for motorized opportunities increase, so too does the demand for non-motorized recreation (PF, Doc. F12, p. 21).

The most recent public opinion survey regarding management of the Helena National Forest was conducted during the winter of 2001/2002 (Bureau of Business and Economic Research, University of Montana) (PR, Doc. F12, pp. 2 and 3). One question addressed the appropriate amount of motorized vehicle access on the Forest. Respondents were almost equally divided on the amount of motorized access that was needed. Rigorous research dealing with the amount of public use on the Forest or in the South Belts area is not necessary to determine which roads and trails should be closed to protect natural resources or access a certain location, as was done in this EA (see EA, Appendix A).

4c(3). The agency did not reference any facts or statistics in the environmental document that demonstrate a significant percentage of conflicts between users, yet the document and decision inappropriately use this reason to justify many motorized closures. (Appeal 0093)

Response: While one of the concerns was to minimize conflicting uses (EA, cover page), the discussion in the EA itself (p. 23) says "Conflicts between uses have not been documented to a level that would warrant more exclusive designations for route use." The Forest Supervisor did

NOT cite conflicting uses as the rationale for closing any motorized roads or trails (see DN, pp. 6 to 10, Rationale for Selection of Alternative 2 Modified).

4c(4). In the DN/FONSI (p. 7) the Forest Supervisor states, “I am unwilling to identify further motorized routes in the area beyond what is included in Alternative 2 Modified because of my concerns for creation of conflicting uses.” This capricious, arbitrary, and arrogant approach to planning on the HNF is in violation of the law. (Appeal 0095)

Response: This sentence was taken from a paragraph where the Forest Supervisor was trying to explain how many miles of trails and roads were designated, and why he had not designated more. Taken out of context, this sentence may sound marginally inappropriate; in context the sentence is appropriate to the discussion. The Forest’s approach to travel planning is in compliance with NEPA, NFMA, and the Travel Rule.

4c(5). There has been no quantitative analysis to determine the amount of displacement in the South Big Belt Mountains. (Appeal 0094)

Response: An identified consequence of the changing travel management situation is displacement. The term *displacement* is used to describe the movement of one or more types of recreational user to other locations more suited for their activities. Visitors are displaced due to factors such as overcrowding, lack of opportunities, and desire to avoid certain types of recreation activities. Displacement is a natural function of land management and occurs, to varying degrees, on most public lands. As discussed in issues 5a, 5b, and 5c (below), the cumulative effects analysis (EA, p. 32; PF, Doc. F12, pp. 3, 17, and Doc. H3, p. 5) accounted for the fact that travel decisions on the Lewis & Clark, Beaverhead-Deerlodge, and Gallatin National Forests may cumulatively affect recreation use occurring on the Helena National Forest, thus contributing to displacement of recreation. The cumulative effects analysis is in compliance with NEPA.

4d. The multi-resource needs of the area were not analyzed in the EA. (Appeals 0093, 0095, 0096)

Response: As I discussed in Issue 2j, there is discussion and information for managing for all resources. Included in the specialists’ reports are discussions of recreational opportunities (including hunting) (PR, Doc. F12), range management (PR, Doc. F11), cultural and historical use (PR, Doc. F5), social and economic impacts (PR, Doc. F1), and timber production (PR, Doc. F17). Attempting to respond to all of the items in the Purpose and Need for this project requires balancing human opportunities with appropriate management of natural resources in the area. The summary of the effects between the alternatives (EA, Ch. 2, Table 2-4, p. 17) presents the best attempt at finding a balance, which includes a modest amount of road closures (PR, Doc. H3, pg. 19). The needs of the area were taken into account in the EA.

4e. The socio-economic effects were not adequately taken into account. (Appeals 0093, 0094, 0095, 0097)

Response: As a result of the efforts of MMUA and CTVA, several concerns and issues were brought forward and analyzed in the EA. These included the economic effect of each alternative, the impacts on access for forest products, and the impacts on access for mineral activities (DN, p. 4; EA p. 12). Existing county-level and Forest-level data were used to describe trends in the regional economy. County economic profiles from 2004 were used to provide a recent description of the population, employment, and income composition of the counties comprising the analysis area. NVUM statistics collected in 2002/2003 for the South Belts area reveal that motorized visitor use at those sites during those data collection periods was relatively light. However, the Helena National Forest recognized the tremendous growth in popularity and increase in ownership of OHVs in Montana. It is the growth in use on public lands that is driving the need for route designation (PR, Doc. H3, p. 6; PR, Doc. F12, p. 15).

In order to model changes to jobs and income, expectations for changes in forest visitation were needed. Due to a dearth of recreation impact monitoring data from similar travel planning decisions, no recreation visitation impacts were available for the South Belt area. Instead, the analysis is based on recent economic dependency data and professional judgment regarding the likely change in the contribution of the National Forest System lands in the project area to Broadwater and Meagher counties (EA, pp. 88 to 90).

The economic analysis identified that the proposed changes in travel management is unlikely to have a noticeable effect on the area economy due to little change from the current situation. Although a few vendors and service providers may be impacted due to site-specific changes, substitute recreation and motorized travel opportunities within a short drive will moderate the negative impacts to many of these businesses. Travel management changes may, in fact, promote additional business opportunities in the long-term (PR, Doc. H3, p. 7; EA, pp. 19, 20, 88 to 91).

Social impacts are described in the EA by type, including recreation users (EA, pp. 28 to 36); forest vegetation/fire/fuels users (EA, pp. 77 to 80); range users (EA, pp. 80 to 82); special uses (EA, pp. 84 to 85) and minerals users (EA, pp. 86 to 88). No comment letters were received from any local businesses (PR, Doc. H3, p. 18). Chapter 3 of the EA describes the cumulative effects of the travel plans on and near the Forest (EA, pp. 88 to 90). The 2003 county percentages of economic dependence on recreation and wildlife (4.2 and 11.5 percent) may decline slightly in the short-term. This could be considered a normal part of the shifting in economic dependence typical among highly natural resource dependent counties. Curtailment of motorized activity in multiple locations across the Northern Region could cumulatively have stronger long-term impacts on jobs and income than is expected from each individual travel plan decision alone (EA, p. 90; PR, Doc. H3). The Economic Report also discusses contribution of Forest Service employment and programs in the economic impact areas of the Northern Region (Montana and Northern Idaho National Forests) (PR, Doc. F1, pg. 8). The socio-economic effects were adequately considered, in compliance with NEPA.

4f(1). The effects on elk and elk populations lack data to support closures for management indicator species. The impact of OHV recreation on wildlife has been overstated by the agency and wildlife biologists. Closing areas to reduce road density based on the study in

Colorado is detrimental to the management of big game species in the area. (Appeals 0093, 0094, 0095, 0097)

Response: As discussed in the wildlife biologist's report (PF, Doc. F20) one hunting district (District 446) is above elk population objectives; one is below the objective, and one is within the range. The wildlife biologist report also indicates OHV use may impact elk as reflected through summer habitat effectiveness analyses and hunting season analyses. Hillis et al. (1991) describe an analysis methodology utilizing the concept of security habitat to account for those effects during the hunting season (p.13). Christensen et al. (1993) describe a similar analysis process to analyze summer habitat effectiveness (p.13). Both bodies of research (as well as Van Dyke et al. 1994) identify road use as an impact to elk.

The Helena National Forest Plan identifies elk as a management indicator species and provides standards to manage open road densities (Forest Plan, pp. II/17 to II/18). The wildlife specialist report does not distinguish between types of motorized use for the purposes of analyzing effects to elk. In fact, the only mention of OHV use in the specialist report (p. 21) is in reference to the State-wide OHV plan. It states, the State-wide OHV plan "may present benefits to elk (i.e. prohibiting cross country use of motorized vehicles)". Impacts to elk, as described in the wildlife specialist report (pp.16 to 22) are based on these references and peer reviewed literature (PF, Docs. G13, G17, G24, G30, G38, and G83). The following references were also used by the wildlife biologist in the report to provide a context for elk management: Cooperrider, 2002 (PF, Doc. G15) is a summary of existing literature from throughout the range of elk. Skovlin et al., 2002 (PF, Doc. G41) describes elk habitat use and includes data from Montana and the northern Rocky Mountains. Lonner, 1991 (PF, Doc. G74) describes the need for common understanding and terminology associated with elk management. The impact analysis is based on more than one Colorado Study.

The assertion that the "impact of OHV recreation on wildlife has been overstated by the agency" is not supported by the documentation in the specialist report. The management of elk by providing habitat security through road closures is sound and in compliance with the Forest Plan.

4f(2). Closing routes historically used by hunters will decrease the chance of a good harvest. Elk numbers for the area are above FWP goal for the area. (Appeal 0094)

Response: As discussed in the wildlife biologist's report (PF, Doc. F20) one hunting district (District 446) is above elk population objectives; one is below the objective, and one is within the range. The Forest Plan identifies elk as a Management Indicator Species for commonly hunted species. Forest Plan Standard 4(a) (pp. II/17 to II/18) provides the direction to manage open road densities for elk. The wildlife specialist report (p. 12) discusses the need to provide a balance of hunting opportunities and elk security during hunting season:

"During the hunting season, management of elk includes balancing the need to provide for and protect certain sex and age classes of elk and to provide hunting opportunities. While these parameters are a management function of Montana Fish, Wildlife, and Parks, the Helena National Forest strives to compliment these objectives through management of open road densities relative to the amount of hiding cover in an elk analysis area." Furthermore, "Our goal is to maintain security habitat that allows elk to escape harvest

rather than impose more restrictions on hunters” (Forest Plan, pp.11/17 to11/18). This results in an extended hunting season that “permits a diversity of choice [for hunters] with regard to time, weather conditions, hunter density, and area.”

Closing roads is a good management tool that has historically been used to balance elk security with hunter success.

4f(3). This part of the Helena Forest is unoccupied secondary habitat for Canada lynx. It should be open to snowmobile use, and any road closes due to lynx should be left open to motorized use. (Appeal 0094)

Response: The Decision concerns summer travel management only; winter use was not a part of this process. No decisions were made on snowmobile use. As discussed in the wildlife specialist’s report (PF, Doc. F20) no roads were closed due to lynx habitat management. Only two lynx guidelines are potentially applicable to road management: HUG6 “Upgrading unpaved roads to maintenance levels 4 and 5 should be avoided” and HUG7 “New permanent roads should not be built on ridge-tops and saddles” (PF, Doc. G101). Neither guideline applies to this decision because the decision does not include upgrading or building any new roads.

4g. The EA failed to analyze the effects to the Grassy Mountain IRA from Road #124. You have not presented any documentation to prove that continued use has or will cause irreparable damage so as to preclude them from becoming designated wilderness. (Appeals 0094, 0096)

Response: See responses to 4b(2) and 5d. The 2001 Roadless Rule states, “The intent of this final rule is to provide lasting protection for inventoried roadless areas within the National Forest System in the context of multiple use management.” In the preamble of the 2001 Roadless Rule it also states, “The Roadless Areas Conservation rule, unlike the establishment of wilderness areas, will allow a multitude of activities including motorized uses, grazing, and oil and gas development that does not require new roads to continue in inventoried roadless areas” (DN, p. 8).

Effects to the Grassy Mountain IRA are summarized in Table 2.4 of the EA and are described in Appendix C of the EA. It should be noted that the 2001 Roadless Rule authorized existing motorized uses in roadless areas (DN, p. 8). Thus, inclusion of 8.2 miles (in Alternative 2 modified) of existing routes as designated for motorized use in the Grassy Mountain IRA is in compliance with the 2001 Roadless Rule. Alternative 2-Modified does not change the existing uses in this IRA on existing roads that will remain open to motorized use. Alternative 2-Modified results in closure of 2 miles of existing motorized route in the Grassy Mountain IRA (PR, Doc. H3, p. 5).

As referenced in the *Recreation* section (EA, p. 29), the effects analysis is both quantitative and qualitative. That is, the reduction in available road and trail miles provide a quantitative look at project effects by alternative. The extent of effects on travel routes and other recreation opportunities is necessarily a qualitative assessment based on past forest visitor patterns, historical trends, and professional judgment based on experience of the recreation specialists completing this analysis.

The DN/FONSI (p. 9) has an excellent description of how the District Ranger and staff reviewed all the impacts of the decision for Route 124. Specific effects of the roads and trails to each resource were analyzed and documented in the specialists' reports (PR, Docs. F1 to F20). The analysis of effects to the Grassy Mountain IRA from Route 124 is in compliance with NEPA.

Issue 5. Cumulative Effects:

5a. The multi-administrative and jurisdictional cumulative effects were not taken into account. (Appeals 0093, 0094, 0095)

Response: The cumulative effects analysis in the recreation report (PR, Doc. F12) accounted for the fact that travel management plans elsewhere, such as the Elkhorn Mountain and North Big Belts Travel plans, the BLM's travel plan for the Whitetail-Pipestone Pass area near Butte, the Lewis & Clark and the Gallatin National Forests' travel plans, and ongoing planning on the Beaverhead-Deerlodge National Forest may cumulatively affect recreation use that occurs on the Helena National Forest, and more specifically in the Big Belt Mountains. The report states, "While some new motorized routes were added, other existing motorized routes were closed. On the Gallatin Forest approximately 50% of the existing ATV trails and 40% of the motorcycle trails were closed to motorized travel. Cumulatively, those travel plan decisions on adjacent National Forests have the potential to impact recreation use..." (PR, F12, pp. 21 to 22).

The *South Belts Travel – Cumulative Effects Projects July, 2007* (PR, Exhibit A104, pp. 1 to 3) includes other decisions affecting travel management such as the Clancy-Unionville EIS (2003), Elkhorns Travel Plan EA and Decision (1997), Statewide (3-State) OHV Decision (2001), Travel Planning on adjacent forests, Forest-wide travel planning, and implementation of North Belts Travel Plan decision. Potential displacement and associated effects are covered in both the EA (identified as an issue for analysis, p. 9) and the FONSI (pp. 5, 7, and 13). Cumulative effects were considered in compliance with NEPA.

5b(1). The cumulative effects of past and present closures of winter and summer use on the Helena National Forest were not adequately addressed. (Appeal 0094)

Response: This Decision does not address winter use. As I stated in 5a, cumulative effects of other travel management plans on the Helena National Forest were taken into account. Cumulative effects were considered in compliance with NEPA.

5b(2). The South Belts area had nearly 40 miles of non-system roads inventoried for this project, but you have not presented any data that these roads were not accepted as part of the 2001 OHV Rule, or that any of them were created after 2001. (Appeal 0094)

Response: The FONSI (PR, Doc. H1) states, "The South Belts area, a relatively narrow mountain range of the public lands of the HNF, had nearly 40 miles of nonsystem roads inventoried for this project. This proliferation simply can't continue while expecting the Forest to meet Forest Plan standards. I believe the inclusion of 17.1 miles of nonsystem routes and the subsequent closure of the remaining nonsystem routes in Alternative 2 Modified is appropriate in light of the resource concerns and issues in this travel plan area". This is in compliance with the

2001 OHV rule, and the 2005 travel management rule, which allows for the Deciding Officer to determine which non-system roads to designate and which to close.

5b(3). Meagher County received the lowest economic rating in the state and the nation. The cumulative impact created by the further reduction in resource access was not properly analyzed. (Appeal 0095)

Response: See my response to 4e. The range report (PR, Doc. F11, pp. 9, 11) includes effects by alternative and cumulative effects on the range resource. The minerals report (PR, Doc. F9, pp. 1 and 4) addresses effects by alternative and cumulative effects on the mineral resource. The silviculture report details effects by alternative and cumulative effects on the timber resource. Economic consequences and conclusions are included in the economics report (PR, Doc. F1). The recreation report acknowledges the demands for, and uses of, both motorized and nonmotorized opportunities are increasing (PR, Doc. F12, p. 21). This travel planning effort properly analyzed the cumulative effects on economics and multiple uses, and is in compliance with NEPA.

5b(4). We requested the Forest Service to complete a programmatic impact analysis on the cumulative affect of multiple closures that have occurred over the last few years. This has not been done. (Appeal 0097)

Response: I addressed this issue in 2e, 4d, and 5a. The South Belts analysis accounts for past and ongoing travel planning efforts, both on and off the Forest. The 3-state OHV ROD is a region wide programmatic EIS regarding OHV use, and envisioned the next step to be site specific travel management efforts such as this current analysis. Cumulative effects were considered in compliance with NEPA.

5c. The increased effects of more use in a smaller area was not addressed. (Appeal 0093)

Response: This potential effect has been well covered throughout the process. The recreation report, EA, and FONSI all acknowledge this potentially happening and have discussed the associated effects (see 5a response). The FONSI includes a large section entitled *Reduction of Open Motorized Routes and Potential for Displacement of Motorized Users* (p. 7). Throughout this project the increased popularity of OHVs, increased sales of these vehicles, future increases, and some of the reasons for these increases, are acknowledged (e.g. PR, Doc. F12, p. 21). The travel planning effort also recognizes the demand for nearly all types of outdoor recreation are increasing, including non-motorized recreation, and that many visitors seek an escape from the developed environment. The effects analysis is in compliance with NEPA.

5d(1). The direct, indirect, and cumulative effects to Grassy Mountain IRA from motorized use was not analyzed. (Appeal 0096)

Response: Refer to my responses to 4b(2), 4g, and 10d. This topic is well covered throughout the project (EA, Appendix 3; PR, Doc. H1, p. 12; and the FONSI. The FONSI (p. 9) does effectively provide detail on the decision to have Route 124 seasonally open to motorized vehicles. The cumulative effects analysis is in compliance with NEPA.

5d(2). The Forest Service will be creating a new public loop road open to all licensed vehicles from the subdivision thereby placing even more pressure on this unique roadless area. How will new subdivisions on private land adjacent to the Grassy Mountain roadless area increase use? (Appeal 0096)

Response: The EA (p. 129) acknowledges a subdivision occurs directly east of the Grassy Mountain IRA, including acknowledging the numerous homes built since 1986. The EA (p. 140) includes a section entitled *Cumulative Effects for the Camas Cree, and Grassy Mountain IRAs, and the Mount Baldy Recommended Wilderness Area*. Ongoing private land development east of Grassy Mountain and the expectation of continued growth is included in the section. The potential for increasing OHV use is thoroughly considered. (Please see my response to 5c and 5a).

5d(3). What about the spread of invasive weeds, a common indirect effect of increased motorized access on public lands? These types of indirect impacts need to be addressed by the Forest Service before any final decision to convert Trail 124 to a forest road is made. (Appeal 0096)

Response: Existing weeds in relation to the IRAs are discussed in the EA (p. 130). The spread of invasive weeds, specifically the potential for spread from motorized use and the effects from the proposed action are thoroughly addressed in the weeds specialist report (PR, Doc. F19). In this report, the potential for spread includes the miles of open roads and trails that are available to travel by the public. The amount of motorized routes decreases in the IRAs with this decision. The report acknowledges motorized routes having seasonal or year-round closures may reduce the spread of noxious weed seeds due to less or no vehicle traffic to spread weed seeds. However, the additional miles of motorized trail may increase the potential for weed spread. The report acknowledges that if left untreated, weed infestations would continue to expand with or without vehicle traffic.

The South Belts Travel Plan will not affect the Forest weed spraying crew's ability to treat weeds. Best management practices (see Forest Service Manual 2080) would be applied. The opportunity to treat noxious weeds is the same as it was before the decision. The cumulative effects analysis is in compliance with NEPA.

5d(4). You have not presented any documentation to prove that continued use of inventoried roadless areas has or will cause irreparable damage, so as to preclude them from becoming designated wilderness. (Appeal 0094)

Response: There is no requirement to prove harm to an inventoried roadless area prior to closing a road in it. However, it is clear that motorized use has impacted the IRAs. The recreation specialist conducted a route-by-route review of all routes in the inventoried roadless areas in the project area. The effect of these routes on the roadless character of each inventoried roadless area of the project area under each alternative was determined (PR, F12, p. 3).

In the Grassy Mountain IRA discussion, for example, (PR, Doc. F12, p. 13) the recreation specialist states, "Resource damage attributable to motorized vehicle use is readily apparent on

certain routes in some areas. Documented damage includes: rutting, multiple parallel routes, erosion, and the spread of noxious weeds.” The Forest Supervisor was well within his authority to close roads in the inventoried roadless areas.

Issue 6. The Forest did not use appropriate baseline conditions in the analysis. Natural conditions should have been used as the benchmark for the test of impacts on natural resources. (Appeal 0093)

Response: The projected impacts of the various alternatives were compared to those in the existing plan. This is in compliance with NEPA and the Council on Environmental Quality (CEQ). As discussed in CEQ’s Forty Most Asked Questions, # 3A: “In these cases ‘no action’ is ‘no change’ from current management direction or level of management intensity. Therefore, the ‘no action’ alternative may be thought of in terms of continuing with the present course of action until that action is changed. Consequently, projected impacts of alternative management schemes would be compared...to those impacts projected for the existing plan...The second interpretation of ‘no action’ is illustrated in instances involving federal decisions on proposals for projects. ‘No action’ in such cases would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward” (NEPA’s Forty Most Asked Questions, #3A, which can be found at <http://www.nepa.gov/nepa/regs/40/40p3.htm>). The analysis used the correct baseline conditions.

Issue 7. The project analysis team lacked objectivity because the project team did not include any ORV and motorized enthusiasts. (Appeal 0093)

Response: There are no requirements for an interdisciplinary team to include “enthusiasts” of any hobby. The interdisciplinary team did include a recreation specialist and a transportation specialist. A list of preparers is provided (PR, Doc. C1, pp. 153, 161 to 163), and although not required to be, the recreation specialist (S. Wyatt) for the ID Team is an owner of a licensed ATV (4-wheeler). Input from motorized enthusiasts was received and considered during scoping, during the 30 day comment period, and throughout the entire process (see the EA, FONSI, and PR Sections B and C, and the recreation report). In addition to whatever use occurs off the job, members of the Townsend Ranger District also use OHVs during the course of their duties on the job. It is clear from the EA the ID team maintained their objectivity throughout the analysis.

Issue 8. The Forest failed to coordinate and collaborate with the local government. (Appeal 0095)

Response: The appellant is correct that the responsible official shall coordinate with appropriate Federal, State, county, and other local governmental entities and tribal governments when designating trails and areas on National Forest System lands (36 CFR 212.53). This commitment has been honored in the multiple field trips, public meetings, and scoping processes. The governmental entities have been informed and became involved to the extent they wished (EA, Appendix B). This public input has been received, properly addressed, and is included in the Project Record (PR, Sections A, B, C, D, E, F, and H. See transmittal letter, pp. 34 to 37 for an extensive list of the governmental contacts).

Issue 9. The Decision fails to recognize the requirement to fully monitor the planning area. The monitoring part of the decision is limited to the enforcement of the transportation plan. This disregards the human environmental impacts that will result in a significant impact to the human environment. (Appeal 0095)

Response: It is within the Deciding Official's authority to determine what will be monitored. The planning area will continue to be monitored as required by the existing Forest Plan. Beyond the monitoring requirements of the Forest Plan, the Deciding Official included in his decision the monitoring of the effectiveness of the closure methods and monitoring to insure the enforceability of the decision (DN, Attachment B, p. 1). The decision also includes monitoring to make sure the spring breakup closure procedures are effective in preventing damage to road surfaces (DN, Attachment B, p. 2). The inclusion of these monitoring items, and not additional monitoring items, is in compliance with NEPA and NFMA.

Issue 10. Consistency with the Forest Plan, regulations, and laws:

10a. The EA, DN, and FONSI goes against the Forest Plan direction, and are not consistent with the goal of providing multiple-use opportunities.. Restricting motorized and mechanized use in recommended wilderness and roadless areas is not and has not been authorized by congress. To restrict these uses within recommended wilderness is outside the Forest's authority and must not be accepted. (Appeals 0093, 0094, 0097).

Response: The Helena Forest Plan (Plan, pp. II/3) lists the 18 Forest goals, including Goals 1 and 2, which are to "[p]rovide a range of quality outdoor recreation opportunities within a forest environment that can be developed for visitor use and satisfaction" and "[p]rovide a range of quality recreation, including motorized and nonmotorized opportunities, in an undeveloped forest environment."

There are no Forest Plan recreation standards specific to motorized recreational opportunities. The Forest Plan does contain road management standards (Plan, pp. II/31 to II/32). Standard 1 states, "The Helena National Forest will generally be open to vehicles except for roads, trails, or areas which may be restricted...The Forest Road Management program will be used to review, evaluate, and implement the goals and standards of the management area in the Forest Plan with regard to road, trail, and area wide motorized vehicle use." Standard 2 states, "Road management decisions will be based on user needs, public safety, resource protection, and economics. Most existing roads will be left open. But most new roads will be closed, at least during critical periods for big game." While the decision does close some roads and trails to motorized use, it is clear the decision still is consistent with the Forest Plan.

The Forest Plan Management Goal (Plan, p. III-73) for recommended wilderness is to protect the wilderness characteristics, and, to the extent possible, allow for existing uses. The Standard (Plan, p. III/75) for recreation states, "Visitor use may be restricted to prevent loss of solitude or unacceptable depreciation of the wilderness qualities." The Wilderness Act does not prevent such protection of recommended wilderness. The decision is in compliance with the Forest Plan and the Wilderness Act.

10b. The Elk Plan in the Forest Plan is outdated. (Appeal 0094)

Response: Just because an elk population is above the goal for a particular elk management unit does not mean the forest-wide big game standards (Plan, pp. III/17 to III/21, and Appendix G, pp. C/1 to C/11) are outdated. In compliance with NFMA, projects must be in compliance with the Forest Plan. The Travel Management Decision is in compliance with the Forest Plan.

10c. The decision is in violation of the Multiple-Use Sustained Yield Act of 1960 (MUSYA). (Appeal 0093)

Response: MUSYA gives the Forest Service broad authority to manage National Forest System lands for multiple uses and defines “multiple use” (in part) as management of all the various resources of the National Forests so that they are utilized in the combination that will best meet the needs of the American people. MUSYA specifically provides “that some land will be used for less than all of the resources” (16 U.S.C. 531(a)). It does not state that all National Forest System lands are to be open to all uses. The decision is in compliance with MUSYA.

10d. The decision violates the Roadless Rule and Inventoried Roadless Area direction by changing the of use of roads and trails, and adding roads in the Grassy Mountain IRA (0096).

Response: The history of Trail 124 has been discussed above. The Travel Plan decision does not construct or designate any new roads in the Grassy Mountain IRA. The decision does recognize Trail 124 as a motorized trail. Forest Roads would be reduced in Grassy Mountain IRA from 10.2 miles to 7.1 miles; motorized trails would be increased from 0 to 1.4 miles (EA, Appendix 3, Table C10). Designation of trails in IRAs is not prohibited by the Roadless Rule and Inventoried Roadless Area direction. The Decision reduces the miles of motorized routes in all three Inventoried Roadless Areas within the project area (DN, p. 1). It is in compliance with the Roadless Rule and Inventoried Roadless Area direction, and with the Forest Plan direction on Inventoried Roadless Areas.

10e. The South Belts Travel Plan failures to comply with Executive Order 11644. (0096)

Response: Executive Order 11644, Sec 9, states the “...agency head shall...whenever he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands, immediately close such areas or trails to the type of off-road vehicle causing such effects, ...”

The wildlife, heritage, timber, and soils specialists analyzed the impact that is occurring to resources from off-road vehicle use of the existing trail and road system and projected impact from Alternative 2 (Project Record, Docs. 5, 13, 17, and 20). They did not find the use would cause considerable adverse effects. The Travel Plan is in compliance with EO 11644.

RECOMMENDATION

I have reviewed the record for each of the contentions addressed above and have found that the analysis and decision adequately address the issues raised by the appellant. I recommend the Forest Supervisor's decision be affirmed and the appellant's requested relief be denied.

/s/Paul Bradford
PAUL BRADFORD
Appeal Reviewing Officer

cc:
Forest Coordinator
Responsible Official